



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2023-0236]**

#### **Commercial Driver's License: Florida Department of Highway Safety and Motor Vehicles; Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the Florida Department of Highway Safety and Motor Vehicles (FLHSMV) has applied for an exemption from the commercial driver's license (CDL) skills testing regulation requiring the three-part CDL skills test to be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, and on-road skills. The FLHSMV is seeking an exemption to allow the tester, at their discretion, to continue testing an applicant who fails the pre-trip inspection or basic vehicle controls segments of the CDL test and allow the applicant to come back at a later date to retake the failed segment(s) only. FMCSA requests public comment on the applicant's request for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2023-0236 by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). See the **Public Participation and Request for Comments** section below for further information.

- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2023-0236) for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the **Privacy Act** heading below.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

**Privacy Act:** In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice DOT/ALL-14 FDMS, which can be reviewed under the “Department Wide System of Records Notices” link at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notice>. The comments are posted without edit and are searchable by the name of the submitter.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards,

FMCSA; (202) 366-2722; richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

#### Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2023-0236), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number “FMCSA-2023-0236” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

#### Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at [brian.g.dahlin@dot.gov](mailto:brian.g.dahlin@dot.gov). At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the Federal Register (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49

CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

### **III. Applicant's Request**

The FLHSMV seeks an exemption from the requirement in 49 CFR 383.133(c)(6) which requires the three-part CDL test be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, and on-road skills. Florida operates as a third-party testing state, where nearly all CDL skills tests are conducted by third-party testers. If an applicant fails one segment of the test, they cannot attempt the next segment(s) and must return on a different day to retake all three parts of the test. The FLHSMV is seeking an exemption to allow the tester, at their discretion, to continue testing an applicant who fails the pre-trip inspection or basic vehicle controls segments of the test and allow the applicant to come back at a later date to retake only the failed segment(s). The applicant cites that the most failed segment of the test is the pre-trip inspection, and if the exemption is granted, the tester could continue to test basic vehicle control skills and on-road skills in this instance. If the CDL applicant passed these other portions of the test, they could return at a later date and retake just the pre-trip inspection portion of the test. The exemption applicant further states that, if granted, the exemption would allow their compliance staff to better utilize their time and resources in completing the required monitoring of third-party testers. FLHSMV believes the exemption would not compromise safety, because the decision to continue with the test would reside with certified, experienced testers. The FLHSMV also notes that, with the implementation of the Federal Entry-Level Driver Training regulations, most applicants being tested have been certified as proficient in operating commercial motor vehicles,

having completed behind-the-wheel training that prepares them to safely operate a commercial motor vehicle during the on-road portion of the CDL skills test.

A copy of the FLHSMV's application for exemption is available for review in the docket for this notice.

#### **IV. Request for Comments**

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on FLHSMV's application for an exemption from the requirement in 49 CFR 383.133(c)(6) that the CDL skills test must be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, and on-road skills. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

**Larry W. Minor,**  
*Associate Administrator for Policy.*